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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/697,800

10/31/2003

Jorg Bernard

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1152

32172

7590

12/14/2007

DICKSTEIN SHAPIRO LLP

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NEW YORK, NY 10036-2714

EXAMINER

MAHAFKEY, KELLY J

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/697,800

Applicant(s)

BERNARD ET AL.

Examiner

Kelly Mahafkey

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 30-50 and 61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-50 and 61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/12/07</u> . | 6) <input type="checkbox"/> Other: _____  |

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Art Unit: 1794

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#### **DETAILED ACTION**

Amendments made 11/1/06 have been entered.  
Claims 30-50 and 61 are pending.

Note: The Examiner of this application has changed. Please direct all further correspondence to Examiner Mahafkey.

#### ***Claim Objections***

The objection to claim 60 has been withdrawn in light of applicant's amendments made 11/1/06.

#### ***Specification***

The objection due to the specification due to the arrangement of the specification has been withdrawn in light of applicant's amendments submitted 11/1/06.

The following objection to the specification remains: The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

#### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 30-32, 34, 38-42, 44-47 and 49 are rejected under 35 U.S.C. 102(e) as being anticipated by Barrett et al (US 6531174). The references and rejection are incorporated herein and as cited in the office action mailed August 10, 2006.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 30-31, 34-39, 42-46 and 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willibald-Ettle et al (US 6458400). The references and rejection are incorporated herein and as cited in the office action mailed August 10, 2006.

Claims 33, 36-37, 43, 48, 50, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrett et al (US 6531174) in view of the combination of Cherukuri et al (US 2003/0026826) and Willibald-Ettle et al (US 6458400). The references and rejection are incorporated herein and as cited in the office action mailed August 10, 2006. Newly added claim 61 recites limitations similar to those as recited in claim 50. Thus, claim 61 is rejected for the same reasons of record that claim 50 has been rejected.

### ***Response to Arguments***

Applicant's arguments filed November 1, 2006 have been fully considered but they are not persuasive.

Applicant argues that the references of record do not teach of isomaltulose, as instantly claimed. This argument is not convincing. Applicant's claims recite, "A gelatin-free soft caramel comprising... a crystalline sweetener phase formed by isomaltulose..." and thus applicant's claims require that the caramel include a sweetener phase which is *formed by isomaltulose*; applicant's claims do not require that the particular substance, isomaltulose be included in the caramel composition. Isomalt is manufactured by hydrogenating isomaltulose. Thus, since Barrett teaches of a caramel composition which includes a sweetener phase consisting of isomalt, thus teaching that the caramel composition includes a sweetener phase derived from isomaltulose, as instantly claimed. Similarly, Willibald teaches of a caramel composition which includes a sweetener phase consisting of isomalt, thus teaching that the caramel composition includes a sweetener phase derived from isomaltulose, as instantly claimed.

**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kelly Mahafkey  
Examiner  
Art Unit 1794



KEITH D. HENDRICKS  
SUPERVISORY PATENT EXAMINER

